

# amednews.com

~ American Medical News ~



[Illustration by Jon Krause / [www.jonkrause.com](http://www.jonkrause.com)]



## "I'm sorry": Why is that so hard for doctors to say?

Concerns about medical liability, insurance coverage and a lack of training for doctors mean an apology after medical errors is the exception.

**By KEVIN B. O'REILLY, amednews staff. Posted Feb. 1, 2010.**

When you hurt someone, saying "sorry" may seem like the least you can do. But when the hurt occurs in the medical arena, offering an apology is not so easy.

Thirty-five states have laws offering some kind of legal protection for physicians who express regret or empathy to patients who experience an adverse event. But laws vary in what they protect from admissibility in court. Most insurers discourage doctors from apologizing for fear it could hurt them in court, and lawyers often advise against it.

Hospitals are required to tell patients about serious mistakes. But it is unclear to what extent disclosure policies are followed, and these disclosures may not be accompanied by apologies.

More than a decade since studies first showed that openness and apology might work, "I'm sorry" is still rarely uttered in medicine. Indeed, it has been more than two decades since the Lexington Veterans Affairs Medical Center in Kentucky decided to change how it reacted in the aftermath of adverse events.

The move came in 1987 after the hospital paid more than \$1.5 million in damages in two liability lawsuits. Under its policy, the hospital investigates and discloses the results, even if findings show the adverse event was the result of an error. An apology is offered when appropriate, along with a financial settlement.

### **35 states have laws that protect physicians who say "I'm sorry."**

The physician who managed the disclosure program, and who talked to the patients and families, was Steve S. Kraman, MD.

"We found that if a bad thing that happened was followed by appropriate behavior on the part of the hospital, like disclosure of the facts, apology and compensation, the media reports tended to focus on that rather than bad behavior," said Dr. Kraman, now professor of pulmonology care and sleep medicine at the University of Kentucky College of Medicine. "We got universally good publicity out of it, our costs were low, we got just positive results from top to bottom."

Dr. Kraman and his colleagues at the Lexington VA believed that being honest with patients, apologizing for mistakes and offering financial compensation was both the right thing to do and financially sound. But how did their costs compare with those of other VA hospitals? In the Dec. 21, 1999, *Annals of Internal Medicine*, Dr. Kraman published the results of his research.

From 1990 to 1996, the Lexington VA had 88 claims and paid an average \$15,622 per claim, compared with a \$98,000 average at VA hospitals without "I'm sorry" policies.

The study, which garnered wide publicity, was published just weeks after the Institute of Medicine's seminal "To Err is Human" report that cited research estimates of nearly 100,000 deaths annually due to preventable medical mistakes.

"Initially, I thought this was a good idea, and as soon as it's publicly known, it probably will be a quick change," Dr. Kraman said. "I was naive. In most places, it's not changed -- it's business as usual."

### **The Joint Commission requires disclosure to patients in sentinel event cases.**

There has been some movement.

Before Dr. Kraman's study, the Veterans Health Administration in 1995 adopted a systemwide disclosure policy. In 2002, the Joint Commission began requiring disclosure to patients in sentinel event cases. That same year, the University of Michigan Health System adopted a disclosure, apology and compensation policy, cutting litigation costs by \$2 million a year and new claims by more than 40%.

Medical centers affiliated with the University of Illinois at Chicago, Stanford University, Johns Hopkins University and Harvard University also have adopted "I'm sorry" policies. So have Kaiser Permanente's medical centers, the Catholic Healthcare West system, and the Children's Hospitals and Clinics of Minnesota. COPIC Insurance Co., a medical liability carrier in Colorado, started openly communicating about medical errors in 2000 and reimburses patients for costs of up to \$30,000.

American Medical Association ethical opinion states that when a doctor errs, "the physician is ethically required to inform the patient of all the facts necessary to ensure understanding of what has occurred" and that liability concerns should not impede disclosure. The AMA favors traditional tort reforms such as damage caps, but also supports testing alternatives, for which the Dept. of Health and Human Services has set aside \$25 million.

Douglas B. Wojcieszak is founder of the Sorry Works! Coalition, which promotes the apology, disclosure and compensation concept among physicians, insurers and hospitals, and offers training. Wojcieszak estimates that 5% to 10% of hospitals nationally are taking the "I'm sorry" approach. But, he said, many decline to publicize that for fear of drawing attention from trial lawyers.

"There are a lot more hospitals and health care organizations, medical practices and long-term-care facilities that are doing this, but they are just doing it quietly. We're still at the early adopter stage," said Wojcieszak, who funds Sorry Works through speaking and consulting fees. He said he came to the field after he lost a brother to a medical error in 1998.

Rick Boothman is chief risk officer at the University of Michigan Health System, one of the early adopters. He said the reason other doctors and hospitals have been slow to say "I'm sorry" is simple.

"What holds us back is fear, and you can't quantify it," Boothman said. "Those fears are not the result of bad experiences -- they're the result of people who've never tried it."

The change has been frustratingly slow, said Michael S. Woods, MD, CEO of Civility Mutual Educational Services, which offers training on apology and disclosure.

"This is something that's been on the radar now for 10 years, and we aren't seeing huge changes," said Dr. Woods, author of *Healing Words: The Power of Apology in Medicine*. "There are pockets where there's incredible success. But if we had the same evidence for a new diabetes treatment that we have for the success of apology and truth-telling, people would go out and change their treatment of diabetes tomorrow. That's how compelling the data are."

### **Legal, insurance barriers**

Physicians may have good reasons to steer clear of apologizing, some lawyers say.

"If [the apology] becomes an admission that's usable in a malpractice case, it could affect the ability to defend the case," said Steven I. Kern, a senior partner at Kern Augustine Conroy & Schoppmann, a Bridgewater, N.J.-based law firm that specializes in representing physicians. "Most insurance companies say that if you as the insured do something that affects our ability to defend the case, we're not going to cover it. Going out and saying 'I'm sorry' not only is going to adversely impact any ability to defend the case, but may well relieve you of that insurance coverage."

David Harlow, a health lawyer in the Boston area, said doctors nationally are contractually required to notify their liability insurers of potential claims. Taking a more active approach, including apologizing when appropriate, could help avoid court, he said.

"I teach preventive law to my clients," Harlow said. "Hopefully, that resonates with people who believe in preventive medicine. It's equally applicable. For short-term money up front, you can address issues before they mushroom into something much bigger."

Some medical liability insurers are open to the idea of doctors apologizing.

"We encourage our insureds to disclose any error or any process that occurred that caused injury to patients," said Robin Diamond, senior vice president of patient safety at The Doctors Co., a physician-owned carrier. But, she added, the company wants to make sure everyone agrees about what happened first.

"Disclosure doesn't always equal saying 'I'm sorry,'" Diamond said. "Apologies are very appropriate in certain situations. But physicians who are very familiar with 'I'm sorry' programs sometimes say 'I'm sorry' too quickly before ... we are sure the event wasn't the result of patient comorbidities or some other factor. We still have the American justice system to contend with."

Oklahoma State Medical Assn.-owned Physicians Liability Insurance Co., which insures about half of the state's doctors, last year began offering a 6% discount to physicians who attend a seminar on disclosure and apology. More than 300 doctors have taken part.

"We're just trying to change the entire culture of our physicians," said Carl T. Hook, MD, the insurer's CEO and a retired otolaryngologist. "All these years we have been trained that if you have an adverse event or something occurs with the patient, that you lock down and don't talk to anybody about it at all."

Changing physician attitudes is easier when doctors get consistent support within the health care organization and from the insurer, said Jo Shapiro, MD, chief of otolaryngology and director of the Center for Professionalism and Peer Support at the Brigham and Women's Hospital in Massachusetts.

"It's crucial that everybody gets the messages that we all believe in this transparency, even though we understand that it's hard -- that it's the right thing to do," said Dr. Shapiro, who is also associate professor of otology and laryngology at Harvard Medical School. A team of nine health professionals helps coach physicians with the disclosure process, and Dr. Shapiro's group offers peer support after an adverse event.

Fear, guilt and embarrassment are just a few of the emotions doctors may feel after an unanticipated event, said Dr. Shapiro, who was sued unsuccessfully by a patient who had an adverse surgical outcome.

"People are ashamed that they have hurt somebody when they are trained to help people," Dr. Shapiro said. Helping doctors handle their own emotional reactions is often a first step to helping them talk with their patients.

Whether barriers to disclosure and apology are legal, organizational, financial or psychological, the moral imperative to tell patients the truth and apologize when called for appears to be gaining headway, advocates said.

"I have been talking about this idea since 2002, and for years people just thought I was crazy," said the University of Michigan's Boothman. "Now that's not the issue anymore. At

least, people are hearing some part of the message that this is OK to do and good to think about, and you'll see that snowball start to go faster."